

## MOTION FOR POST CONVICTION COLLATERAL RELIEF

<p>COMMONWEALTH OF PENNSYLVANIA VS</p> <p><u>Matthew Ebo</u></p> <p>(Name of Defendant)</p>	<p>COURT AND DOCKET NUMBERS</p> <p>To be completed by Clerk of Court</p>
---	--

**NOTE: List below those informations or indictments & offenses for which you have not completed your sentence.**

**INFORMATION OR INDICTMENT NUMBERS:**

CP-02-CR-0002821-2012

CP-02-CR-0002821-2012

**I WAS CONVICTED OF THE FOLLOWING CRIMES:**

Murder 1<sup>st</sup> Degree;  
Robbery;  
Robbery of a motor vehicle;  
Violation of firearm act;  
Conspiracy;

DEPT. OF COURT RECORDS  
CRIMINAL DIVISION  
ALLEGHENY COUNTY PA

18 JAN 17 PM 3:25

0371

ORIGINAL

## Respondents' Exhibit 57

## 1. MY NAME IS:

Matthew Ebo

## 2. I AM NOW

- (a) ☐ On Parole (b) ☐ On Probation (c) ☐ Confined in SCI. Somerset  
 (d) ☐ Residing at \_\_\_\_\_

## 3.

I WAS SENTENCED ON November 28<sup>th</sup>, 2012 TO A TOTAL TERM  
 OF Life + 92, COMMENCING ON 11-28, 2012 BY  
 JUDGE(S) Beth A. Layhara.

FOLLOWING A: ☒ Trial by jury ☐ Plea of Guilty  
☐ Trial by a judge without a jury ☐ Plea of nolo contendere  
 I am ☐ Serving ☐ Waiting to serve The Sentence Imposed

## 4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

- ☒ (I) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ☒ (II) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ☐ (III) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- ☐ (IV) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
- ☐ (V) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- ☐ (VI) The imposition of a sentence greater than the lawful maximum.
- ☐ (VII) A proceeding in a tribunal without jurisdiction.

**5. I AM ELIGIBLE FOR RELIEF BECAUSE, ALTHOUGH THIS PCRA PETITION IS BEING FILED MORE THAN ONE YEAR AFTER THE DATE OF FINAL JUDGMENT, I HEREBY ALLEGE AND CAN PROVE THAT THE FOLLOWING EXCEPTION HAS BEEN MET:**

☐

- (I) My failure to raise this claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States.**

I intend to prove my claim was late due to governmental interference by showing:

*N/A*

☐

- (II) The facts upon which the claims is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence.**

The following facts were previously unknown to me:

*N/A*

☐

- (III) The right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.**

The Supreme Court of the United States or the Commonwealth of Pennsylvania has recognized the following retroactive constitutional rights after my period for filing:

*N/A*

**6. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS:** (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

Trial counsel was ineffective for allowing the Commonwealth to present evidence at trial that was absolutely prejudicial and had nothing to do with petitioner; thus, relieving the Commonwealth of its burden of proof.

Trial counsel failed to present or call an expert witness to dispute the Commonwealth's single identifying witness who repeatedly made false claims, testimony and identification.

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

Private investigator Fox reported new evidence of recantation by the Commonwealth's single identifying witness Saday Robinson.

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

Ineffective Assistance of Counsel  
Trial Court Errors

Prosecutor misconduct

Trial Counsel failed to investigate and present evidence.

**7. SUPPORTING EXHIBITS**

(A) In support of this motion I have attached as exhibits:

- ☐ Affidavits [Exhibit(s) No. \_\_\_\_\_]
- ☐ Records [Exhibit(s) No. \_\_\_\_\_]
- ☐ Other Supporting Evidence [Exhibit(s) No. \_\_\_\_\_]

(B) I have not attached any affidavits, records or other supporting evidence because

*Petitioner will attach all affidavits and other supporting evidence to petitioners amended P.C.R.A. petition, in accordance and pursuant to Rule 905 Com.-v- Jefford, 781 A.2d. 1167 1171 (Pa. 2001)*

**8. I HAVE TAKEN THE FOLLOWING ACTION(S) TO SECURE RELIEF FROM MY CONVICTION(S) OR SENTENCE(S):**

(A) Direct Appeal

(IF "YES," name the court(s) to which appeal(s) was/were taken, date, term and number, and result.)

☒ YES ☐ NO

*Superior Court 6-21-17 # 92 WDA 2016-Denied*

*Supreme Court 12-13-17 # 279 WAL 2017-Denied*

(B) Previous proceedings in the courts of the Commonwealth of Pennsylvania

☐ YES ☒ NO

(IF "YES," name the type of proceedings (such as habeas corpus, etc.) – including former proceedings under the Post Conviction Hearing Act the Court(s) in which petition(s) was/were filed, date, term and number, and result, including all appeals.)

(C) Habeas Corpus or other petitions in Federal Courts

☐ YES ☒ NO

(IF "YES," name the district in which petition(s) was/were filed, date(s), Court Number – civil action or miscellaneous, and result, including all appeals.)

(D) Other legal proceedings

☐ YES ☒ NO

(IF "YES," give complete details – type of action, court in which filed, date, term and number, and result, including all appeals.)

9. FOLLOWING MY ARREST, I WAS REPRESENTED BY THE FOLLOWING LAWYER(S): (Give the lawyer's name and the proceeding at which he/she represented you.)

Randall H. McKinney - Trial

Jessica L. Herndon - Superior Court (Pa.)

Victoria H. Velt - Supreme Court (Pa.)

10. I PREVIOUSLY CHALLENGED MY CONVICTION IN THE FOLLOWING COURTS:

Court	Caption	Term Number	Attorney	Relief Requested
<u>Superior Court</u>	<u>92 WDA 2016</u>	<u>Jessica Herndon</u>	<u>New Trial</u>	
<u>Pa. Supreme Court</u>	<u>279 WAL 2017</u>	<u>Victoria Velt</u>	<u>New Trial</u>	

11. THE ISSUES WHICH I HAVE RAISED IN THIS MOTION HAVE NOT BEEN PREVIOUSLY LITIGATED OR ONE OF THE FOLLOWING APPLIES:

- ☒ (I) The allegation of error has not been waived.
- ☐ (II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmation of sentence of an innocent individual.

The failure to litigate this issue(s) prior to or during trial or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

12. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:

- (A) ☒ Release from custody and discharge
- (B) ☒ A new trial
- (C) ☐ Correction of Sentence
- (D) ☐ Other Relief (Specify): \_\_\_\_\_

13. I request an evidentiary hearing. I certify, subject to the penalties for unsworn falsification to authorities set forth at 18 Pa.C.S. § 4904, that the following persons will testify to the matters stated. I have attached to this petition all documents material to the witness' testimony.

Witness Name: See Page # 5 section 7-B

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

14. Based upon the exceptional circumstances set forth below, I request that the District Attorney produce the following documents:

This petitioner request the Commonwealth produce the photo array shown to Saday Robinson September 2011, this witness positively identified another person.

15. I ask that the Court consider the following argument, citation and discussion of authorities:

*Strickland v. Washington* 466 U.S. 668 (1984)-  
*Commonwealth v. Walker* 92 A3d 746 (2014)  
*Napue v. Illinois* 360 U.S. 264 (1959)  
*Commonwealth v. Story* 476 Pa 391; 383 A2d 155 (Pa 1978)  
*Haskell v. Fafina* 2015 U.S. Dist Lx 119200 (W.D. Pa 2015)

16.

(A) I am ☐ ABLE ☒ NOT ABLE to pay the cost of this proceeding.

I have \$ 3.80 as of 1.3.18 in my prison account.

(B) My other financial resources are:

None.

17. (A) ☒ I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer.

(1) ☒ I request the court to appoint a lawyer to represent me.

(2) ☐ I do not want a lawyer to represent me.

(B) ☐ I am represented by a lawyer. (Give name and address of your lawyer.)

Matthew Ellis  
 (Signature of Defendant)



## UNSWORN DECLARATION

I, Matthew Ebo do hereby verify that the facts set forth in the above motion are true and correct to the best of my personal knowledge or information and belief, and that any false statements herein are made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C.S. § 4904), relating to unsworn falsification to authorities.

No Notary  
Required

Matthew Ebo  
(Signature of Defendant)

<p><b>COMMONWEALTH OF PENNSYLVANIA</b></p> <p style="text-align: center;">VS</p> <p><u>Matthew Ebo</u> (Name of Defendant)</p>	<p><b>IN THE CRIMINAL COURTS OF THE COUNTY</b> <b>OF</b> <u>Allegheny</u></p> <p>Criminal Action No. <u>0282/1</u> of <u>Feb</u> <u>2012</u></p>
--	--

**ORDER**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ Upon consideration of the foregoing motion:

<p>1. <input type="checkbox"/> The motion is returned to defendant for amendment as follows, such amendment to be made on or before _____, 20____</p>
<p>2. <input type="checkbox"/> A rule is granted upon the Commonwealth of Pennsylvania to show cause why a hearing should not be granted. The rule is returnable on or before _____, 20____</p>
<p>3. <input type="checkbox"/> The request to proceed as a poor person, without the payment to costs, is <input type="checkbox"/> granted <input type="checkbox"/> denied.</p>
<p>4. <input type="checkbox"/> Upon finding that defendant is unable to obtain a lawyer _____ Esq., is appointed to represent him/her.</p>
<p>5. <input type="checkbox"/> The Clerk of Court is ordered and directed to do the following forthwith:</p> <p>(a) To serve a copy of this motion and this order upon the District Attorney of _____ County.</p> <p>(b) To send a copy of this motion and this order to _____ Esq., the lawyer for the defendant.</p> <p>(c) To send a copy of this order to the defendant.</p>
<p>6. <input type="checkbox"/></p>

ORIGINAL

Respondents' Exhibit 57